Director to act. The proper time for the Director to act would be before the issuance of documents of titles. I understand steps have been taken to change the earlier practice to prevent similar incidents as the present one from occurring.

The process of subdivision of land is set out in Cap. 82. It can be assumed that the provisions of section 9 of Cap. 82 had been complied with. The next step was for the Director of Lands & Surveys to take action under section 10 as soon as practicable. This had not been done until after the titles had been issued and the Registrar had to take action under section 136 of the Land Code. These were *bona fide* departmental administrative errors. I consider the learned judge to be right in taking the view that in this particular case, the provision of section 10 of Cap. 82 must be complied with first before the Registrar could take action under section 136 of Cap. 81. There may be situations whereby only section 136 of Cap. 81 would come into play without having to consider section 10 of Cap. 82.

Appellants did not make any claim under section 12 of Cap. 82 against the local government within the prescribed period of six months from the date of the deposit of the survey plan under section 9(3) of Cap. 82. The fact that appellants were issued with titles for Lots 869 and 970 and by mistake asked to pay quit rent does not transform void titles into valid titles. There can be little doubt that the titles were wrongly issued by the Land Office in respect of Lots 869 and 970 which were meant for open space.

Section 20 of Cap. 82 envisages that the owner would surrender his title or titles and after approval of subdivision of his land new title or titles would be issued to him for the unexpired period of the title or titles surrendered and on terms and conditions then usual for grants or leases of State land being a document or documents of *titles which would permit the land to be used in accordance with the conditions of the deposited plan.* In my view, the titles for Lots 869 and 970 were not properly issued for use in accordance with the conditions of the deposited plan.

In my opinion, these titles should never have been delivered in the case of subdivision before action was taken under section 10 of Cap. 82 as Lots 869 and 970 were surrendered for open space on approval of subdivision. The titles were defective in that they are not registrable under the Land Code by virtue of section 17 of Cap. 82 which, in dealing with the avoidance of certain transactions, relating to subdivision, provides that: —

"Any plan, agreement, deed or instrument of any kind whatsoever whereby any subdivision contrary to the provisions of this Ordinance is created, recognised, granted or reserved shall be deemed to be void and of no effect, and shall not be registrable under the provisions of the Land Code."

For reasons given, I would dismiss the appeal with costs.

Syed Othman F.J. concurred.

Appeal dismissed.

Solicitors: *Chan, Jugah, Wan Ullok & Co.*

TARA RAJARATNAM v. DATUK JAGINDER SINGH & ORS.

[F.C. (Wan Suleiman, F.J., Ibrahim Manan F.J., & Hashim Yeop A. Sani J.) January 16 & July 9, 1980]
[Kuala Lumpur — Federal Court Civil Appeal No. 201 of 1979]

Practice and Procedure — Appeal — Notice of appeal not in accordance with form — Failure to sign memorandum of appeal — Notice of appeal filed before Judge issued certificate not to hear further argument — Irregularities curable — Federal Court (Civil Appeals) (Transitional) Rules, 1963, rules 6(3), 19(3) and 95(1) — Courts of Judicature Act 1964, s. 68(2).

In this case the respondents applied for orders that the appeal filed by the appellants be dismissed as (a) the notice of appeal did not comply with Form I of the First Schedule to the Federal Court (Civil Appeals) (Transitional) Rules, 1963; (b) the copies of the memorandum of appeal were not signed and dated as required by rule 19(3) and Form 3 of the First Schedule to the Rules; and (c) the notice of appeal was filed before the learned judge issued his certificate that he required no further argument. The appellant applied for amendment of the Notice of appeal and Memorandum of appeal to comply with the Rules.

Held: (1) the non-compliance with the requirements of rule 6(3) and Form I of the Federal Court (Civil Appeals) (Transitional) Rules, 1963, in respect of the notice of appeal was in the circumstances of this case a mere irregularity which should not render the notice of appeal void;

(2) the failure to sign and date the memorandum of appeal was curable under rule 95(1) of the Rules;

(3) the appellant should be granted leave to appeal, even though she has not applied for such leave, as it was desirable to hear the appeal on its merits and it was the duty of the court to see that justice be seen to be done.

Cases referred to:-

(1) *Hong Kim Sui & Anor.* v. *Malayan Banking Bhd.* [1971] 1 M.L.J. 289.

(2) *R.* v. *Justices of Kent* (1872-73) L.R. 8 Q.B.D. 305.

FEDERAL COURT.

P. Cumaraswamy (*C.D. Das* and *S. Naicker* with him) for the appellant.

R. Khoo for the 1st and 3rd respondents.

2nd respondent in person.

Cur. Adv. Vult.

Ibrahim Manan F.J. (delivering the judgment of the Court): In the action the plaintiff has asked for a declaration that the transfers to and registration of the land held under Certificate of Title No. 13817 Lot No. 6025 situate in the Mukim of Senai-Kulai, with a bungalow dwelling house erected thereon (the said property) in the name of the second defendant and subsequently in the name of the third defendant as beneficial owners thereof are unlawful, null and void, and for other consequential orders. On October 2, 1979 the defendants applied by way of Summons-in-Chambers No. 608 of 1979 for an Order that the action be dismissed on the grounds of *res judicata,* the issues therein having been determined and adjudicated upon in an action between the same parties in Johore Bahru High Court Civil Suit No. 261 of 1977 and the same is frivolous and vexatious and an abuse of the process of the court and that the plaintiff pay to the defendants their costs in the action and the application and that in the meantime all further proceedings in the action be stayed. On October 10, 1979 Anuar J. granted the application. The plaintiff (appellant) is appealing against the learned judge's decision.

The defendants (respondents) filed a notice of motion on December 11, 1979 asking, that this application be heard before the appeal (prayer (a)); that the appeal be dismissed on the grounds that the notice of appeal dated and filed herein on October 22, 1979 has not been brought in accordance with and does not comply with Form I of the First Schedule to Federal Court (Civil Appeals) (Transitional) Rules, 1963 (the said rules) in that it is not directed as required to the various addressees (prayer (b)), that there has been no proper notice of appeal in that the notice of appeal dated October 22, 1979 was filed before the learned judge issued his certificate on October 29, 1979 (prayer (c)) and that all the copies of the memorandum of appeal are undated and unsigned by either the appellant or her solicitors as required by rule 19(3) of and Form 3 of the First Schedule to the said Rules (prayer (d)); for such orders as may be made as may be necessary under the circumstances (prayer (e)) and that the respondents be given the costs of this application and of the appeal (prayer (f)). Affidavit in support of this application made by Dato Suppiah, the second defendant and the solicitor in charge of the appeal for all the three respondents, was filed on December 11, 1979, while an affidavit in rely made by Mr. S.P. Naiker, solicitor for the appellant was filed on December 18, 1979.

On January 8, 1980 notice of motion was filed by appellant asking for the following Orders:

(1) that the Order of Court dated the 10th day of October 1979 be amended by substituting the word 'allowed' for the word 'dismissed' appearing therein at page 156 of the Record of Appeal;

(2) that the appellant or her solicitors be given liberty to formalise the memorandum of appeal at page 7 of the record of appeal by signing all copies of the same hereof;

(3) that the appellant or her solicitors be given liberty to formalise the Notice of Appeal so as to conform with Form I of the First Schedule of the said Rules, in terms of the address thereof,

and for such further or other Order as this Honourable Court deems fit.

As prayers (2) and (3) of appellant's application seek to overcome prayers (d) and (b) respectively of the respondents' application we decided to hear the 2 applications together before hearing the appeal. That incidentally disposes of prayer (a) of the respondents' application. Prayer (1) of the appellant's application is merely a request to rectify the clerical error in the Order dated October 10, 1979 and we allow it.

It is the contention of Dato Suppiah that as rule 6(3) provides that "A Notice of Appeal shall substantially be in Form I" non-compliance therewith is fatal. With respect we do not agree with him. Rule 95(1) of the said rules reads as follows:

"95(1) Non-compliance with any of these Rules or with any Rule of practice for the time being in force, shall not render any proceedings void unless the court or a judge shall direct, but such proceedings may be set aside either wholly or in part as irregular, or amended or otherwise dealt with in such manner and upon such terms as the court or judge shall think fit."

In *Hong Kim Sui & Anor.* v. *Malayan Banking Bhd.*,[1] this court held that the failure to use Form I as required by rule 6(3) and to give the address of the appellants or their solicitors in the notice of appeal were mere irregularities which did not render the proceedings void. As stated by Mr. S.P. Naiker in his affidavit, though the notice of appeal did not indorse the addresses of those to whom the notice should be directed, covering letters were addressed and directed to those to be served at the time of the filing of the notice of appeal and ensured that they were served. We are therefore of the view that non-compliance with the requirements of rule 6(3) and Form I is in the circumstances of this case a mere irregularity which shall not render the notice of appeal void.

In respect of the memorandum of appeal it is the contention of Dato Suppiah that as it was not signed and dated as required under Form 3 it is a nullity and therefore there is no appeal before this court to hear it. In his affidavit Mr. S.P. Naiker stated that the omission to sign and date the memorandum was due to an oversight and the anxiety to file the record of appeal in time. It was prepared by him and after typing he read through the same and at page 4, paragraph 9 he deleted a word and initialled by the side. Then immediately he attended to the other copies in the same manner and initialled them. Having initialled all the copies in his anxiety to have them bound he forgot to sign at the foot of page 7 as required. Several authorities have been cited by Dato Suppiah but most of them deal with unsigned pleadings. None of them deals with unsigned memorandum of appeal and the case nearest to it is *R.* v. *Justices of Kent*[2] which relates to a notice of appeal which was not unsigned, but signed by the clerk of the appellant's attorney by his authority. It is to be noted, however, that while the signature in the notice of appeal in that case is required by statute (12 & 13 Vict. c. 45 s. 1) the signature in the memorandum of appeal is required in our case by rule 19(3) which provides that "The Memorandum of Appeal shall be substantially in Form 3," and that even if there is an English equivalent to our rule 95(1) the requirement of the statute would prevail. Mr. S.P. Naiker has given what we consider to be a genuine explanation as to why the memorandum of appeal had not been signed and as it had been filed together with all the documents as required under rule 19(4)(a) to (f) and as the appellant's solicitor had initialled on one of its pages, we are satisfied that it is not a mere fiction and that the grounds stated therein are *bona fide*. We therefore agree with Mr. Cumuraswamy that the failure to sign and date the memorandum of appeal in this case is curable under the said rule 95(1).

Regarding respondents' prayer (c) in our view the wording of section 68(2) of the Courts of Judicature Act, 1964 does not appear to restrict the power of the Federal Court to grant leave even though the appellant has not applied for leave as in this case. We feel that it is not only proper but a duty of the court to see that justice be seen to be done and to achieve this end we think that it would be desirable to hear the appeal on its merits. The background facts of this case would in our opinion also warrant this decision. Even though the appellant had jumped the gun

by filing his notice of appeal before the certificate was issued by the learned judge he had applied verbally for further argument and the learned judge had already decided then not to hear further argument and this is so stated in his Grounds of Judgment.

We therefore dismiss the respondents' motion except for prayer (a) and allow prayers (1), (2) and (3) of the appellant's motion. There will be no order as to costs.

Order accordingly.

RIVER ESTATES SDN. BHD. v. DIRECTOR GENERAL OF INLAND REVENUE

[F.C. (Lee Hun Hoe C.J. Borneo, Syed Othman & Abdul Hamid F.JJ.) May 8 & September 8, 1980]

[Kota Kinabalu — Federal Court Civil Appeal No. 37 of 1980]

Revenue Law — Income tax — Supplementary income tax — Timber profit — Company carrying on plantation operations on some estates and timber operations on other estates — Whether company carrying on single business or two separate businesses — Income Tax Act, 1967, ss. 4, 43 & Schedule 3 — Supplementary Income Tax Act, 1967, ss. 19 & 21.

In this case the appellant company was carrying on plantation operations in some estates and timber operations in other estates. Assessments of income tax were raised for the four years of assessment 1968 — 1972. The appellant company was served with notices of additional assessments in 1973 as the Revenue adopted the view that the appellant company's estate or plantation operations were a separate source or business from their timber extraction operations and computed the adjusted income accordingly. The question for the determination of the Special Commissioners was whether upon the facts and in law the appellant company's timber and plantation operations constituted a single integrated business as claimed by the appellant company or were two distinct sources or businesses as claimed by the Revenue. The Special Commissioners decided that the appellant company had separate sources of income in each of its estates and the learned trial judge upheld the decision of the Special Commissioners. The appellant company appealed to the Federal Court.

Held: the company carried out two main categories of business namely plantation activities and timber operations and there were therefore two separate businesses deriving income from the five estates or sources.

Cases referred to:-

(1) *Scales* v. *George Thompson & Co.* 13 T.C. 83.

(2) *Commissioners of Inland Revenue* v. *Williamson Brothers* 31 T.C. 370.

(3) *Nathan* v. *F.C.T.* (1918) 25 C.L.R. 183.

(4) *Rhodesia Metals Ltd.* v. *Taxes Commissioner, South Africa* [1940] 3 All E.R. 422, 426.

(5) *Director-General of Inland Revenue* v. *American Leaf Blending* [1975] 2 M.L.J. 26; [1979] 1 M.L.J. 1.

(6) *Edwards* v. *Bairstow & Harrison* 36 T.C. 207.

(7) *Howden Boiler and Armaments Co. Ltd.* v. *Stewart* (1924) 9 T.C. 205.

HIGH COURT.

S. Woodhull (*Thomas Chia* with him) for the appellants.

Mokhtar bin Haji Sidin (Senior Federal Counsel) (*Joseph Kong* and *Edward Chia* with him) for the respondents.

Cur. Adv. Vult.

B.T.H. Lee J.: This is an appeal by the River Estates Sdn. Bhd. — the appellants herein — against the decision of the Special Commissioners of Income Tax — in this judgment called "Special Commissioners".

The case stated having set out the facts and submissions at length I do not propose to enter on a detailed description of all the relevant circumstances but some reference to the salient features of the case is necessary. The facts as to which there is no dispute as found by the Special Commissioners are these:—

(1) *Litang Estate*

Appellants acquired Litang Estate on Sungei Segama with a total area of 4,700 acres on which 1,000 were planted with rubber. The balance of 3,700 acres was virgin land on incorporation of the appellant company. Logging operations commenced in 1950 in the jungle reserve land on the said estate. In 1957 a rubber nursery was established there and 27 acres of a cleared reserve area, which had been planted with vegetables during the Japanese Occupation, were planted up with rubber in 1953. Between the years 1953 and 1964, the appellants planted 989 acres of rubber, 814 acres of cocoa and 500 acres of oil palm, but severe floods in 1963 and 1965 destroyed virtually all the planted area except 25 acres of oil palm and 619 acres of young rubber. Since then there has only been one small replant of 25 acres of Litang Estate.

(2) *Bode Estate*

This was acquired in 1950 with a total area of 900 acres all of which were planted with rubber.

(3) *Dagat Estate*

In 1952 appellant was given an annual licence to log timber at Dagat. It was his intention to plant bananas in this area but this never materialised since this piece of land was never alienated for plantation. Only timber operations were carried out in that area.

(4) *Tomanggong Estate*

In 1961 appellant acquired 10,025 acres of virgin land from Guthrie Corporation. This area is now known as Tomanggong Estate. Extraction of timber in this area commenced in late 1962 followed by planting of oil palm. By the end of 1964, 1,475 acres were planted but floods in 1965 destroyed 656 acres. Planting continued until 1969 and the appellant found that only about 3,000-3,500 acres of high land out of the 10,025 acres were suitable for planting. The appellant considered this area not to be an economic holding, so it applied to the Sabah State Government for the alienation of 6,454 acres of adjoining Forest Reserve land which was eventually alienated in 1969. The appellant progressively planted a total acreage of 8,382 acres with oil palm.

(5) *Malubok Estate*

Another area of 3,960 acres of largely jungle land, later known as Malubok Estate, was purchased by the appellant in mid-1959. By the end of 1962 the appellant had logged 1,500 acres and planted up 600 acres with cocoa and 100 acres with rubber. Floods in 1963 destroyed 600 acres of that newly planted area, as a result of which it was found that the area was not suitable for planting. The appellant subsequently abandoned this area after extracting all valuable timber in it.

(6) *Tenggara*

In 1965 the appellant was approached by North Borneo Timber Co. Bhd. to log for them on contract an area known as Tenggara in the Kretam Forest Reserve. The appellant agreed to work the area and was given a contract to extract timber. The appellant was paid at a fixed price per cubic foot of logs delivered to North Borneo Timber Co. Bhd. This contract terminated in 1969 when North Borneo Timber Co. Bhd. ceased logging in that area.

Upon the authority of *Scales* v. *George Thompson & Co.*[1] which I think it unnecessary to state at any greater detail, I consider that the point is settled.